

**Thomas Jefferson to Louis Guillaume Otto, March 29, 1791, Transcription recipient states L. W. Otto, from the Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.**

**TO THE FRENCH CHARGÉ D'AFFAIRES<sup>1</sup> J. MSS. (L. W. OTTO)**

<sup>1</sup> See *ante*, page 175 for the Report on this dispute.

March 29, 1791.

Sir, —The note of December 13th. which you did me the honor to address to me on the acts of Congress of the 20th. of July 1789 and 1790, fixing the tonnage payable by foreign vessels arriving from a foreign port *without excepting those of France*, has been submitted to the Government of the United States. They consider the conduct of his most Christian Majesty in making this the subject of fair discussion and explanation as a new proof of his justice and friendship and they have entered on the consideration with all the respect due to whatever comes from his Majesty or his Ministers, and with all the dispositions to find grounds for an union of opinion which a sincere attachment to your nation and a desire to meet their wishes on every occasion could inspire. But the 5th Article of the Treaty of Amity and Commerce is not seen here exactly in the point of view in which your note places it.

The 3d. and 4th. Articles subject the vessels of each nation to pay in the ports of the other, only such duties

as are paid by the most favoured nation: and give them reciprocally all the privileges and exemptions in navigation and commerce, which are given by either to the most favoured

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nations. Had the contracting parties stopped here, they would have been free to raise or lower their tonnage as they should find it expedient; only taking care to keep the other on the footing of the most favoured nation.

The question then is whether the 5th Article, cited in the note, is anything more than an application of the principle comprised in the 3d and 4th to a particular object? or whether it is an additional stipulation of some thing not so comprised?

I. That it is merely an application of a principle comprised in the preceding Articles, is declared by the express words of the Article, to wit, "*Dans l'exemption cidessus est nommement compris &c.*" in the above exemption is *particularly comprised* the imposition of 100. sols per ton established in France on foreign vessels. Here then is at once an express declaration that the exemption from

the duty of 100 sols, is *comprised* in the 3d and 4th Articles; that is to say, it was one of the exemptions enjoyed by the most favoured nations, and, as such, extended to us by those Articles. If the exemption spoken of in this 1st member of the 5th. Article was *comprised* in the 3d and 4th. Articles, as is expressly declared, then the reservation by France out of that exemption (which makes the 2d member of the same Article) *was also comprised*: that is to say, *if the whole* was comprised *the part* was comprised. And if this reservation of France in the 2d member was comprised in the 3d and 4th. Articles, then the counter reservation by the United States (which constitutes the 3d and last member of the same Article) was also comprised. Because it is but a corresponding portion of a similar whole on our part, which had been comprised by the same terms with theirs.

In short the whole article relates to a particular duty of 100. sols laid by some antecedent law of France on the vessels of foreign nations, relinquished as to the most favoured, and consequently to us. It is not a new and additional stipulation then, but a declared application of the

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stipulations comprised in the preceding articles to a particular case, by way of greater caution.

The doctrine laid down generally in the 3d and 4th Articles, and exemplified specially in the 5th amounts to this. "The vessels of the most favoured nations, coming from foreign ports, are exempted from the duty of 100. sols: therefore you are exempted from it by the 3d and 4th Articles. The vessels of the most favoured nations, coming coastwise, pay that duty; therefore you are to pay it by the 3d and 4th Articles. We shall not think it unfriendly in you to lay a like duty on coasters, because it will be no more than we have done ourselves. You are free also to lay that or any other duty on vessels coming from foreign ports, provided they apply to all other nations, even the most favoured. We are free to do the same, under the same restriction: but exempting you from a duty which the most favoured nations do not pay, does not exempt you from one which they do pay."

In this view it is evident that the 5th Article

neither enlarges, nor abridges the stipulations of the 3d and 4th. The effect of the Treaty would have been precisely the same had it been omitted altogether; consequently it may be truly said that the reservation by the United States in this Article is completely useless. And it may be added with equal truth that the equivalent reservation by France is completely useless: as well as her previous abandonment of the same duty; and in short the whole article. Each party then remains free to raise or lower it's tonnage, provided the change operates on all nations, even the most favoured.

Without undertaking to affirm, we may obviously conjecture, that this Article has been inserted on the part of the United States from an over caution to guard, *nommement*, by name, against a particular aggrievance, which they thought they could never be too well secured against: and that has happened, which generally happens; doubts have been produced by the too great number of words used to prevent doubt.

II. The Court of France however understands this Article as intended to introduce something to which the pre-

-ceding Articles had not reached; and not merely as an application of them to a particular case. This opinion seems to be founded on the general rule, in the construction of instruments, to leave no words merely useless, for which any rational meaning can be found. They say that the reservation by the United States of a right to lay a duty equivalent to that of the 100. sols, reserved by France, would have been completely useless, if they were left free, by the preceding Articles, to lay a tonnage to any extent whatever. Consequently that the reservation of a part proves a relinquishment of the residue.

If some meaning, and such a one, is to be given to the last member of the Article, some meaning, and a similar one, must be given to the corresponding member. If the reservation by the United States of a right to lay an equivalent duty, implies a relinquishment of their right to lay any other, the reservation by France of a right to continue the specified duty to which it is an equivalent, must imply

a relinquishment of the right, on her part to lay or continue any other. Equivalent reservations by both, must imply equivalent restrictions on both. The exact reciprocity stipulated in the preceding Articles, and which pervades every part of the Treaty, ensures a counter right to each party for every right ceded to the other.

Let it be further considered—that the duty called *tonnage* in the United States is in lieu of the duties for Anchorage, for the support of Buoys, Beacons, and Light-houses, to guide the Mariner into harbour, and along the coast, which are provided and supported at the expence of the United States, and for fees to measurers, weighers, gaugers, &c., who are paid by the United States; for which articles, among many others (light excepted) duties are paid by us in the ports of France under their specific names. That Government has hitherto thought these duties consistent with the Treaty; and consequently the same duties

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under a general instead of specific monies, with us, must be equally consistent with it; it is not the name, but the thing which is essential. If we have renounced

the right to lay any port duties, they must be understood to have equally renounced that of either laying new or continuing the old. If we ought to refund the port duties received from their vessels since the date of the Act of Congress, they should refund the port duties they have received from our vessels since the date of the Treaty, for nothing short of this is the reciprocity of the Treaty.

If this construction be adopted then, each party has forever renounced the right of laying any duties on the vessels of the other coming from any foreign port, or more than 100 sols on those coming coastwise. Could this relinquishment be confined to the two contracting parties alone it's effect would be calculable. But the exemption once conceded by the one nation to the other, becomes immediately the property of all others, who are on the footing of the most favoured nations. It is true that those others would be obliged to yield the same compensation, that is to say, to receive our vessels duty free. Whether France

and the United States would gain or lose in the exchange of the measure with them, is not easy to say.

Another consequence of this construction will be that the vessels of the most favoured nations, paying no duties will be on a better footing than those of nations, which pay a moderate duty, consequently either the duty on these also must be given up, or they will be supplanted by foreign vessels in our own ports.

The resource then of duty on vessels for the purposes either of revenue or regulation, will be forever lost to both. It is hardly conceivable that either party, looking forward to all these consequences, would see their interest in them. So that on the whole, Sir, we consider the 5th article of the Treaty merely as an illustration of the 3d and 4th articles, by an application of the principles comprised in them to the case stated in that, and that a contrary construction would exceedingly embarrass and injure both the contracting parties.

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We feel every disposition on our part to make considerable sacrifices where they would result to the sole benefit of your nation: but where they would excite from

other nations corresponding claims, it becomes necessary to proceed with caution. You probably know, Sir, that the general subject of navigation was before our Legislature at their last Session, and was postponed merely for the want of time to go through it before the period arrived to which the Constitution had limited their existence. It will be resumed at the meeting of the new Legislature, and from a knowledge of the sincere attachment of my Countrymen to the prosperity of your nation, and to the increase of our intercourse with it, I may safely say for the new Legislature that the encouragement of that intercourse for the advantage of both parties will be considered as among the most interesting branches of the general subject submitted to them. From a perfect conviction of the coincidence of our interests nobody wishes more sincerely to cultivate the habit of mutual good offices and favours than he who has the honor to be with sentiments of the greatest respect and esteem, Sir, your most obedient and most humble Servant.